IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs March 19, 2008

STATE OF TENNESSEE v. JEREMY W. MEEKS

Appeal from the Circuit Court for Grundy County
No. 3948 Buddy Perry, Judge

No. M2007-01600-CCA-R9-CD - Filed May 22, 2008

The State of Tennessee pursues an interlocutory appeal of the Grundy County Circuit Court's suppression of the confession of the defendant, Jeremy W. Meeks, to charges of rape of a child, *see* T.C.A. § 39-13-522, and aggravated sexual battery, *see id.* § 39-13-504. We reverse the order of the trial court.

Tenn. R. App. P. 9; Judgment of the Circuit Court Reversed, Case Remanded

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and JOHN EVERETT WILLIAMS, J., joined.

Robert E. Cooper, Jr., Attorney General and Reporter; Jennifer L. Bledsoe, Assistant Attorney General; James Michael Taylor, District Attorney General; and Steve Strain, Assistant District Attorney General, for the appellant, State of Tennessee.

Philip A. Condra, District Public Defender; and Robert G. Morgan, Assistant District Public Defender, for the appellee, Jeremy W. Meeks.

OPINION

In the March 23, 2007 suppression hearing, former Tracy City police officer Barry Parker testified that in 2003 he interviewed the defendant's stepdaughter, who was 12 years old. The victim said she had been sexually penetrated by the defendant. During his subsequent investigation at the defendant's home, Mr. Parker asked the defendant to come to the police station "to talk . . . about these allegations." Mr. Parker testified that the defendant later came to the police station and that when the defendant arrived, Mr. Parker read to him his *Miranda* rights. The defendant signed a "standard admonition and waiver form." The waiver form introduced into evidence bears a statement that it was signed "4-6-03" at "11:00 p.m."

Mr. Parker testified that the defendant did not request to speak to an attorney. Mr. Parker interviewed the defendant, and the defendant consented to Mr. Parker's writing out his statement, which the defendant signed.

The statement, bearing the date April 6, 2003, and the time 11:00 p.m., recounted that, during an outing on a "four-wheeler," the victim removed her clothes and sat astride the defendant, telling him to engage in sexual intercourse with her lest she tell her mother, the defendant's wife, that the defendant raped her. The statement recounted that the defendant complied, after which the victim "seemed happy and content all the way home."

On cross-examination, Mr. Parker testified that he started writing the statement at 11:00 p.m. He agreed that he had the defendant sign the waiver form when he first arrived at the police station. Nevertheless, Mr. Parker recalled that after the defendant arrived at the station, he interviewed the defendant "an hour or so," adding at one point, "I know it was an hour."

Concerning the circumstances of the interview or interrogation, Mr. Parker testified that it occurred in the police department's "boardroom," a room 12 feet by 14 or 16 feet that featured a glass panel and windows. Mr. Parker, who wore a badge and a gun but no uniform, told the defendant that he did not have to talk about the victim's allegations and that he was free to go home. The interview included conversation about a number of subjects unrelated to the victim's allegations. Mr. Parker testified that the interview was conducted in conversational tones and that, following the defendant's signing of the statement, he was released and was not arrested.

Stacy Shrum testified that in 2003 he worked as a Tracy City police officer. He accompanied Officer Parker to the defendant's residence. He said that the defendant was asked to come to the police department for the questioning and that the defendant drove separately to the department. He was present during part of Officer Parker's interview of the defendant at the police station. Officer Shrum testified that he was "in and out" during the interview.

On cross-examination, Officer Shrum recalled that the conversation with the defendant at the police station lasted approximately two hours. Afterward, he testified, Officer Parker wrote out the statement, and the defendant signed it.

On redirect examination, Officer Shrum estimated that the defendant had been at the police station "over 30 minutes" before he signed the *Miranda* waiver form. Then, Officer Shrum testified that he witnessed the defendant's signing the waiver "[w]hen this statement was signed."

Following this testimony, the trial court granted the motion to suppress the statement. The court found that the defendant was questioned for two hours at the police department before he executed the *Miranda* waiver. The court ruled that, during this two-hour period, the defendant was subjected to "custodial investigation."

Upon the State's motion, the trial court granted a Tennessee Rule of Appellate Procedure 9 interlocutory appeal, and on August 17, 2007, the court of criminal appeals also granted the Rule 9 appeal. On appeal, the State challenges the trial court's ruling that the interview of the defendant equated to custodial interrogation.

When reviewing a trial court's findings of fact and conclusions of law on a motion to suppress evidence, we are guided by the standard of review set forth in *State v. Odom*, 928 S.W.2d 18 (Tenn. 1996). Under this standard, "a trial court's findings of fact in a suppression hearing will be upheld unless the evidence preponderates otherwise." *Id.* at 23. However, when the trial court does not set forth its findings of fact upon the record of the proceedings, the appellate court must decide where the preponderance of the evidence lies. *Fields v. State*, 40 S.W.3d 450, 457 n. 5 (Tenn. 2001); *see Ganzevoort v. Russell*, 949 S.W.2d 293, 296 (Tenn. 1997). As in all cases on appeal, "[t]he prevailing party in the trial court is afforded the 'strongest legitimate view of the evidence and all reasonable and legitimate inferences that may be drawn from that evidence.'" *See State v. Carter*, 16 S.W.3d 762, 765 (Tenn. 2000) (quoting *State v. Keith*, 978 S.W.2d 861, 864 (Tenn. 1998)). Furthermore, we review the trial court's conclusions of law under a de novo standard without according any presumption of correctness to those conclusions. *See, e.g., State v. Walton*, 41 S.W.3d 75, 81 (Tenn. 2001); *State v. Crutcher*, 989 S.W.2d 295, 299 (Tenn. 1999).

A confession must be free and voluntary, and it must neither be "extracted by any sort of threats or violence, nor obtained by any direct or implied promises, . . . nor by the exertion of any improper influence" or police overreaching. *Bram v. United States*, 168 U.S. 532, 542-43,18 S. Ct. 183, 187 (1897). The issue of voluntariness requires the trial judge to focus on whether the accused's will to resist making a confession was overborne. *State v. Kelly*, 603 S.W.2d 726, 728 (Tenn. 1980). At an evidentiary hearing, the State has the burden of demonstrating by a preponderance of the evidence that the defendant's statements were voluntary, knowing, and intelligent. *Id*. at 728.

Also the Fifth Amendment right to counsel attaches during custodial interrogation. *Edwards v. Arizona*, 451 U.S. 477, 481-82, 101 S. Ct. 1880, 1883-84 (1981). If a defendant requests counsel while being given his warnings pursuant to *Miranda v. Arizona*, 384 U.S. 436, 444-45, 86 S. Ct. 1602, 1612 (1966), or during custodial interrogation, the interrogation must cease. *Edwards*, 451 U.S. at 482, 101 S. Ct. at 1883.

In determining whether *Miranda* warnings are required, the court must look to whether the defendant was "in custody" at the time he made the incriminating statement. *State v. Anderson*, 937 S.W.2d 851, 853 (Tenn. 1996). Custodial interrogation is "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda*, 384 U.S. at 444, 86 S. Ct. at 1612.

"In custody" has been defined as a "formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." *Stansbury v. California*, 511 U.S. 318, 322, 114 S. Ct. 1526, 1528-29 (1994) (citations and internal quotation marks omitted); *see State v. Bush*, 942

S.W.2d 489, 499 (Tenn. 1997). The United States Supreme Court has held that it is appropriate to apply an objective test to determine whether a person is in custody and therefore entitled to receive *Miranda* warnings. *See Stansbury*, 511 U.S. at 323, 114 S. Ct. at 1529; *Florida v. Royer*, 460 U.S. 491, 501-02, 103 S. Ct. 1319, 1326 (1983). Courts look to the totality of the circumstances of the interrogation and inquire "how a reasonable [person] in the suspect's position would have understood [the] situation." *Berkemer v. McCarty*, 468 U.S. 420, 442, 104 S. Ct. 3138, 3151 (1984); *see also Stansbury*, 511 U.S. at 323-24, 114 S. Ct. at 1529.

In *Anderson*, the Tennessee Supreme Court adopted this objective analysis and recognized several nonexclusive factors to aid in the assessment of whether a reasonable person would consider himself deprived of freedom of movement to a degree associated with a formal arrest. Relevant factors include the following:

> the time and location of the interrogation; the duration and character of the questioning; the officer's tone of voice and general demeanor; the suspect's method of transportation to the place of questioning; the number of police officers present; any limitation on movement or other form of restraint imposed on the suspect during the interrogation; any interactions between the officer and the suspect, including the words spoken by the officer to the suspect, and the suspect's verbal or nonverbal responses; the extent to which the suspect is confronted with the law enforcement officer's suspicions of guilt or evidence of guilt; and finally, the extent to which the suspect is made aware that he or she is free to refrain from answering questions or to end the interview at will.

See Anderson, 937 S.W.2d at 855. As these factors indicate, the determination is fact specific.

Before a defendant can knowingly and voluntarily waive his *Miranda* rights, the defendant must be "adequately and effectively apprised of his rights." *State v. Middlebrooks*, 840 S.W.2d 317, 326 (Tenn. 1992). If the waiver is made "voluntarily, knowingly and intelligently," a defendant may waive his rights. *Miranda*, 384 U.S. at 444, 86 S. Ct. at 1612. The State has the burden of proving the waiver by a preponderance of the evidence at the hearing on the motion to suppress. *Bush*, 942 S.W.2d at 500. In determining whether a defendant has validly waived his *Miranda* rights, courts look to the totality of the circumstances. *Middlebrooks*, 840 S.W.2d at 326.

In the present case, the trial court found that the defendant was questioned by the police for about two hours before he waived his *Miranda* rights. The record supports this finding of fact. Therefore, we agree that the issue presented is whether the defendant was in custody for purposes of *Miranda* during this interrogation.

On this point, the trial court held that the defendant was subjected to "custodial investigation, stating that the defendant was inside the police department being questioned for two hours." That finding, however, is not supported by the facts of record.

The police officers asked the defendant to come to the police station to discuss allegations the victim had made against him. Within an hour of the officers' visit to the defendant's home, he arrived at the station. The police interviewed the defendant in "the boardroom at the police department," a room 12 feet by 14 to 16 feet with a glass partition and windows. The conversation during the two-hour span included "wide ranging" subjects unrelated to the victim's allegations. Mr. Parker testified that he told the defendant that he did not have to talk about the victim's allegations and could "go home." Mr. Parker did not wear a uniform but wore a badge and a gun. He testified that he spoke with the defendant in a conversational tone. After the defendant signed his statement, he was not arrested and was allowed to leave. The defendant did not testify and, therefore, did not controvert the State's proof about the circumstances of the interrogation.

Because the trial court made no findings on the record concerning the custodial nature of the defendant's interview, we must determine where the preponderance of the evidence lies. *See Fields*, 40 S.W.3d at 457 n. 5. That notwithstanding, the defendant, as the prevailing party below, benefits from the strongest legitimate view of the evidence, as well as all reasonable inferences that may be drawn therefrom. *Carter*, 16 S.W.3d at 765.

Despite the defendant's enjoyment of the strongest legitimate view of the evidence on appeal, we must conclude that the evidence preponderates against the trial court's determination that the pre-wavier interrogation was custodial. Most of the *Anderson* factors listed above favor the State. Although the interrogation occurred at the police station, the duration and character of the questioning was marked by informal conversation on "wide ranging" subjects. No evidence controverts the proof that the officer's tone of voice and general demeanor were conversational. By all accounts, the defendant provided his own method of transportation to the place of questioning. The number of police officers present ranged from one to two. No evidence described any limitation on the defendant's freedom of movement. No evidence described interactions between the officer and the defendant, the words spoken by the officer to the defendant, or the defendant's verbal or nonverbal responses. The defendant was apparently informed about the officer's suspicions of guilt or evidence of guilt. No evidence controverted Mr. Parker's testimony that he informed the defendant that he did not have to answer questions and could leave.

In our examination of where the preponderance of the evidence lies, we have pondered whether the trial court expressly or implied rejected Mr. Parker's testimony and whether any such rejection affects the result on appeal. The court's finding that the defendant was effectively in custody at the police station for two hours before signing a *Miranda* waiver and giving his statement may suggest that the court discredited the testimony of Mr. Parker, who testified that the *Miranda* warnings were administered, at least, when the defendant first arrived. We note, however, that the trial court made no finding that Mr. Parker's full testimony should be discredited. Also, some of the testimony related to confirmable facts; he related the size and structure of the interview

room and testified that, following the interview, the defendant was released and not arrested. Additionally, we recognize that Officer Shrum did not purport to have knowledge of the full interview because he was "in and out" during that time. In any event, were we to reject Mr. Parker's testimony *in toto* in our quest to determine whether the preponderance of the evidence lies, the remaining evidence did not show that the defendant's statement was the result of custodial interrogation. Basically, Officer Shrum testified that the defendant drove himself to the police station following the officers' request that he do so and that he signed a waiver and his pretrial statement two hours later.

In view of the foregoing analysis, we reverse the order of the trial court and remand the case for further proceedings.

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JAMES CURWOOD WITT, JR., JUDGE